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7 **THE DISTRICT COURT OF GUAM**

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 vs.

11 MICHAEL L. MARASIGAN,
12 JOSE ARTHUR D. CHAN, JR., and
13 CHRISTINE C. CHAN,

14 Defendants.

CRIMINAL CASE NO. 23-00014

**DECISION AND ORDER DENYING
DEFENDANT MICHAEL L.
MARASIGAN'S MOTION TO
DISQUALIFY (ECF NO. 449) AND
MOTION TO RECUSE (ECF NO. 457)**

15 Before the court are Defendant Michael L. Marasigan's (1) Motion *In Limine* To
16 Disqualify Judge Tydingco-Gatewood ("Motion to Disqualify") and (2) Motion Pursuant to 28
17 U.S.C. § 455 to Recuse Trial Judge ("Motion to Recuse"). *See* ECF Nos. 449, 457. The Motion
18 to Disqualify is made under 28 U.S.C. §§ 144, 455; and the Motion to Recuse is made under 28
19 U.S.C. § 455. The motions were accompanied by two affidavits and a declaration, all of which
20 were from one of Defendant Marasigan's counsels, Mr. David J. Lujan. *See* ECF Nos. 448, 452,
21 457-1.

22 The motions and supporting documents make serious allegations that the undersigned
23 judge should be disqualified from presiding over this case because of impartiality and bias
24 against Mr. David Lujan. For the reasons stated herein, the court hereby **DENIES** the motions.

1 **I. Background**

2 Defendants Michael L. Marasigan, Jose Arthur D. Chan, and Christine C. Chan
3 (collectively, the “Defendants”), along with four other defendants who either pled guilty or
4 passed away,¹ were indicted by a grand jury on May 10, 2023, on sixty-four counts, including
5 offenses for Conspiracy to Operate Illegal Gambling Business, in violation of 18 U.S.C. §§ 371,
6 1955(a); Money Laundering Conspiracy, in violation of 18 U.S.C. §§ 1956(h), 1956(a)(1)(B)(i),
7 1957; and Money Laundering, in violation of 18 U.S.C. §§ 1957, 2. *See* Indictment, ECF No. 1.
8 On October 2, 2024, the Government filed a superseding indictment against the Defendants,
9 which added a sixty-fifth count for Conspiracy to Commit Wire Fraud, in violation of 18 U.S.C.
10 §§ 1349, 1343, and modified certain money laundering charges to include conspiracy to commit
11 wire fraud as a specified unlawful activity. *See* Superseding Indictment, ECF No. 212.

12 Relevant here, Mr. Lujan entered his appearance to represent former co-defendant
13 Richard C. Brown on June 15, 2023. *See* ECF No. 36. Mr. Brown passed away on April 28,
14 2024. Six months later, Mr. Lujan entered an appearance on behalf of Defendant Marasigan on
15 October 29, 2024. *See* ECF No. 235; *see also* ECF Nos. 160-61. He joined Mr. Michael F.
16 Phillips as co-counsel for Defendant Marasigan, who has represented the Defendant since the
17 inception of this case, when the Defendant was arraigned on June 14, 2023. ECF No. 235; *see*
18 *also* ECF Nos. 32,33.

19 Jury selection commenced on March 13, 2025, and trial began on March 18, 2025. *See*
20 ECF Nos. 377, 403. Mr. Lujan’s oral motion for recusal was made on April 3, 2025. *See* Am.
21 Mins., ECF No. 454. After the court’s denial of the oral motion, the instant motions were filed.

22 Defendant Marasigan, through counsel alleges in these motions that the undersigned has

23 _____
24 ¹ Defendants Alfredo D. Leon Guerrero, Juanita Capulong, and Minda C. San Nicolas were similarly indicted on
May 10, 2023, but later pled guilty. *See* ECF Nos. 1, 77, 80, 82, 87-88, 204, 209, 232. Defendant Richard C. Brown
was also indicted at this time, but he passed away and the court dismissed the charges against him on May 24, 2024.
See ECF Nos. 160, 161.

1 personal bias and prejudice against Mr. Lujan. Specifically, Defendant Marasigan's counsels
2 allege that the undersigned holds a personal bias against Mr. Lujan after the U.S. Court of
3 Appeals for the Ninth Circuit overturned the undersigned's decision in *United States v. Crowe*,
4 wherein Mr. Lujan was counsel for Mr. Crowe. Mot. to Disqualify at 2, ECF No. 449. Allegedly,
5 the appellate court's decision resulted in the undersigned's non-reappointment² to the bench. *See*
6 Mot. to Recuse at 3, ECF No. 457; Decl. at 2-3, ECF No. 457-1. Defendant Marasigan's
7 counsels further allege that because of the undersigned's personal bias and prejudice against Mr.
8 Lujan, it imposed a short deadline for the motion briefing and an unreasonable trial schedule. *See*
9 Decl. at 3, ECF No. 457-1. Lastly, Defendant Marasigan's counsels allege that the undersigned is
10 accusing Mr. Lujan of feigning illness. *See* Mot. to Disqualify at 2-3, ECF No. 449; Mot. to
11 Recuse at 3-4, ECF No. 457; Decl. at 2-3, ECF No. 457-1.

12 The court recites the following facts as relevant to the proceedings addressed in
13 Defendant Marasigan's motions and to contextualize the decision reached below.

14 **A. March 20, 2025**

15 On March 20, 2025, the third day of trial, Defendant Marasigan's counsels orally moved
16 for an indefinite continuance of the trial because Mr. Lujan was in unbearable pain from a
17 previous knee surgery and indicated he would need to see his doctors in Thailand possibly for
18 another knee surgery. *See* Mins., ECF No. 410. When the court inquired about the duration of
19 Mr. Lujan's trip and when Mr. Lujan was scheduled to leave, Mr. Lujan indicated that he would
20 leave for Thailand "as soon as possible" even though he had not yet made travel arrangements
21 and Mr. Phillips stated that he could not say how long the continuance request would be until
22 "Mr. Lujan is examined by his doctors." *Id.*

23
24 ² A judge who is appointed to the District Court of Guam serves "for the term of ten years and until his successor is chosen and qualified," and, as such, the judge is subject to reappointment at the expiration of their initial ten-year term. *See* 48 U.S.C. § 1424b(a).

1 The court expressed its concern about having to continue a trial that had already started
2 and inquired about the roles of both counsels. *Id.* Mr. Lujan stated that his “role [in the trial] is to
3 do the cross-examination and do the closing argument.” *Id.* Mr. Phillips, on the other hand, was
4 focused on pretrial motions. The court then inquired about Mr. Phillips assuming the cross-
5 examinations during Mr. Lujan’s absence. *Id.* Mr. Phillips explained that he is “not Mr.
6 Marasigan’s choice of counsel . . . but when he retained Mr. Lujan[,] . . . [he became the
7 Defendant’s] choice of counsel.” *Id.*

8 The court reminded counsels that this request was being made after trial had already
9 begun and after witnesses had already testified. *Id.* The court further noted that Mr. Phillips is an
10 able and competent lawyer who has been Defendant Marasigan’s lawyer from the beginning of
11 this case. *Id.* The court issued a briefing schedule on the motion, informed the jurors that an issue
12 arose, and adjourned for the day. *Id.*

13 That evening, Defendant Marasigan filed a “Motion *in Limine* for Continuance,”
14 explaining how Mr. Lujan had difficulty standing and walking in court because of serious knee
15 pain. *See* Mot. at 1-2, ECF No. 407. Contrary to representations made earlier in the day, wherein
16 the continuance was to an unknown date, the written motion requested only a one-week
17 continuance to “allow Attorney Lujan to be seen by his doctor and hopefully receive a concrete
18 prognosis.” *Id.* at 3. The sudden change of request was only explained by Mr. Phillips’s statement
19 in his later declaration that Mr. Lujan informed Mr. Phillips that he “will not need nor be
20 operated on while visiting his doctor in Thailand.” *See* Decl. at 3, ECF No. 412. No other
21 explanation was provided.

22 Defendant Marasigan’s counsels argued that Mr. Lujan’s presence was necessary at trial
23 because “Defendant Marasigan and Attorney Lujan made very clear to Attorney Phillips that
24 Marasigan’s choice of trial counsel was David Lujan.” *Id.* at 2. Mr. Phillips then explained that

1 he was relegated to “serve[] as [Mr.] Lujan’s assistant during trial,” and Defendant Marasigan
2 would be denied his right to choice of counsel under the Sixth Amendment if a continuance was
3 not granted. *Id.* at 3-4.

4 Defendants Arthur Chan and Christine Chan joined in the motion to continue,
5 emphasizing that the parties have “been working together closely for months” and “sharing trial
6 strategy and discussing lines of examination with witnesses under the assumption that Attorney
7 Lujan would b[e] responsible for certain lines of questioning.” *See* Brief at 2, ECF No. 406; *see*
8 *also* Brief at 5, ECF No. 408 (“Mr. Chan’s case is bolstered by the continued participation of Mr.
9 Marasigan’s chosen counsel.”).

10 The Government opposed the request for a one-week continuance on the ground that
11 Defendant Marasigan can proceed with “Mr. Phillips [who] has represented the defendant for
12 almost two years [and] is prepared for trial which has already begun.” Opp’n at 2, ECF No. 411.
13 Mr. Phillips filed a reply to the Government’s opposition and a declaration that attests to his
14 understanding of Mr. Lujan’s medical condition, what Mr. Lujan communicated to him about
15 how he no longer needs an operation and the length of travel, his opinions about Mr. Lujan’s
16 success as an attorney in Guam, and his understanding of Defendant Marasigan’s choice to have
17 Mr. Lujan be his trial counsel. Decl. at 1-5, ECF No. 412.

18 **B. March 21, 2025**

19 On March 21, 2025, the fourth day of trial, the court granted Mr. Lujan’s motion to
20 continue trial because “Mr. Lujan has now indicated that he doesn’t need surgery . . . and that
21 he’s just going to go see his doctors in Thailand” and the requested continuance is now just for
22 one week and not an indefinite time. Mins., ECF No. 415 (*see* recording). At that time, Mr.
23 Razzano, counsel for Defendant Arthur Chan, indicated that he had prescheduled travel
24

1 beginning on April 6, 2025, for two weeks. The court ordered Mr. Razzano to file a formal
2 motion to continue. *Id.*

3 The court called in the jury and instructed them that “one of the counsels has to leave off
4 island and so the court has granted that request, and it is a legitimate request . . . and I don’t want
5 you to hold that against anybody, whether it’s prosecutor or defense, ladies and gentlemen, but it
6 is an urgent matter.” *Id.*

7 Concerned about another possible lengthy delay and the jury’s prolonged separation if the
8 court were to grant Mr. Razzano’s motion for a two-week mid-trial continuance, the court
9 informed the parties of its plan to hold trial past 5:00 p.m. on the week of April 1, 2025, in the
10 hopes that the Government would at least finish its case-in-chief. The court proposed that trial
11 starts at 8:00 a.m. and ends at 7:00 p.m., with a 15-min break at least every 1.5 to 2 hours, a
12 lunch break of 45 minutes, and an evening break of 30 minutes. This schedule was only to run
13 from April 1-4, 2025, and the court indicated that it would revert to its regular schedule after that
14 time. *See Mins.*, ECF No. 440. The court surveyed the jurors about this proposed schedule and
15 received no concerns. *See id.* Additionally, none of the parties objected to this brief period of an
16 extended trial schedule. *Id.*

17 **C. April 1, 2025**

18 Following the one-week recess, trial resumed on April 1, 2025. *See Mins.*, ECF No. 440.
19 Before calling in the jury and proceeding with the Government’s case-in-chief, the court noted
20 that Mr. Razzano filed his motion for a two-week continuance, from April 7, 2025, to April 21,
21 2025, along with the co-Defendants’ joinder and Government’s opposition. *Id.*; *see also* ECF
22 Nos. 419, 427-30.

23 The court called in the jury, thanked them for their time and patience during the one-
24 week break, reminded the jurors that the continuance is not to be held against any of the parties,

1 and stated that there is another request for a continuance for a personal reason. *Id.* The court
2 inquired with the jurors about their availability to continue with trial after the two weeks and
3 reminded them that this request is not to be held against any of the parties. *Id.*

4 After clearing up a possible conflict with one juror, the court granted Mr. Razzano's
5 motion to continue on behalf of Defendant Arthur Chan and proceeded with trial. *Id.* The
6 Government proceeded to call Alfredo Leon Guerrero as its next witness. *Id.* Mr. Leon Guerrero
7 was on the stand for approximately 6.5 hours.³ *Id.* After 6.5 hours, Mr. Leon Guerrero indicated
8 that he was too tired to continue, so the court excused him with the intention of having him
9 recalled after he had an opportunity to rest. *Id.* The Government thereafter called Mr. Jerome
10 Aguon. *Id.*

11 **D. April 2, 2025**

12 On April 2, 2025, all counsels were present except Mr. Lujan. *See Mins.*, ECF No. 441.
13 Mr. Phillips indicated that Mr. Lujan told him that he was "sick this morning" and that "he may
14 have the flu, but he has a stomach problem." Tr. at 4:25-5:7, ECF No. 442. Mr. Phillips then
15 stated his observation that Mr. Lujan "was piling Kleenex and stuff and he left it and I think your
16 staff found it." *Id.* at 5:7-5:14. Mr. Phillips then made a request for a one-day continuance on
17 behalf of Mr. Lujan and his client, stating that Mr. Lujan is "obviously Mr. Marasigan's counsel
18 of choice" and then provided an explanation about how he is unprepared for trial despite the
19 duration of his representation of Defendant Marasigan. *See id.* at 5:18-6:21.

20 In response to Mr. Phillips's request, the parties engaged in the following colloquy with
21 the court:

22 THE COURT: So you're requesting a continuance until tomorrow?

23 MR. PHILLIPS: Yes, Your Honor.

24 ³ The court notes that Mr. Leon Guerrero is elderly and has physical limitations that warranted the court checking in with him throughout his testimony and allowing him to take a break before continuing with his testimony.

1 THE COURT: I got -- you guys -- a lot of continuances and delays here
2 by Counsels.

3 MR. PHILLIPS: Well the same with -- I understand.

4 THE COURT: The first request for continuance was not -- when you first
5 requested it, you did not have a length of time, you did not have -- your
6 client -- I mean your attorney, your co-Counsel had no length of time, no
7 idea if he would have travel, and the Court had denied it initially and
8 said, you know, you don't have anything before the Court that shows any
9 type of certainty.

10 And, I'm sorry, I did not notice that Mr. Lujan -- I didn't see that. You're
11 closer to him, but I saw him in court, he seemed to the Court to be
12 perfectly fine when he was walking in and out and conducting cross-
13 examination with the witness. So I didn't notice he had any flu-like
14 symptoms so I just -- I'll place that on the record as far as the Court's
15 observations, Mr. Phillips.

16 MR. PHILLIPS: Yeah, and if I may also, Your Honor, before I left,
17 because I noticed that he was using the Kleenex and sniffing and
18 everything, I saw a pile and I decided not to touch it. And so when I was
19 mentioning that to Mr. Tenorio this morning, he was kind enough to
20 inform me that he saw it and cleaned it up. But I think co-Counsel will
21 also confirm that they noticed that Mr. Lujan wasn't feeling very well
22 towards the end of the day.

23 THE COURT: All right. So you mean last night?

24 MR. PHILLIPS: Yes, I guess we went till 7:30 or so. But the Court may
remember, he asked to leave because we were not finished.

THE COURT: That's right, he did ask.

MR. PHILLIPS: Right.

THE COURT: I'll figure -- I'll find out what time he asked. All right, so
you're requesting a continuance. Does Mr. Lujan actually have an
appointment with the doctor today?

MR. PHILLIPS: Well, he said he was going to see someone, Your
Honor. So I don't think he had an appointment before eight, but I would
anticipate that he will -- he'll see someone today. That's what he said he
was going to do.

THE COURT: Mr. Gavras?

1 MR. GAVRAS: Your Honor, I didn't see the Kleenexes, but after Mr.
2 Lujan's cross-examination of Mr. Leon Guerrero, he stumbled. It was just
3 -- and I mentioned it to him out there that he had stumbled. And then
4 about 30 minutes before Mr. Lujan asked to leave early, I was starting to
5 get up to tell Mr. Phillips, you know, David looks really exhausted, is the
6 way it looked to me, I mean extremely exhausted, maybe he needs to go
7 now. I didn't realize he was sick. I just thought he was way exhausted,
8 way too exhausted to stay in the courtroom. And that's what I saw. So...

9 THE COURT: On the motion for continuance?

10 MR. GAVRAS: Oh, sure. I'm fine with it, Judge. Yes.

11 THE COURT: Mr. Razzano?

12 MR. RAZZANO: No objection.

13 THE COURT: Ms. David?

14 MS. DAVID: Your Honor, we're ready to proceed. I mean the --

15 THE COURT: Yeah, I feel like there is a lot of -- go ahead, go ahead.

16 MS. DAVID: We're trying our best, even with the long schedule, to
17 present our case in chief. And I just don't want the jury to --

18 THE COURT: Well, I'll let the jurors know that defense Counsel's out
19 again, ill. And I'm just going to let 'em know just so that they know
20 what's going on. They're not to hold it against anybody but --

21 MS. DAVID: I mean I would like to proceed, but I just want to make
22 sure our -- I'm informed that our -- or witnesses are on their way. I
23 apologize if there's going to be a slight delay to that effect if we proceed
24 this morning.

THE COURT: No, that's fine but you have -- you have any other off-
island witnesses that are coming in or are these all on-island witness?

MS. DAVID: These are all on-island witnesses.

THE COURT: So there won't be any delay or prejudice as far as that's
concerned, at least for today? Or the rest of the trial at least. That's what
you're saying to the Court?

MS. DAVID: Yes, Your Honor.

THE COURT: All right. Are all the jurors here?

1 MR. RAZZANO: Actually, Judge, could I make my position a little bit
2 more clear?

3 (Discussion with clerk.)

4 THE COURT: Okay, hold on, hold on. I think he -- she -- Anna, I think
5 he confirmed. You're able to double-check? Yes, Mr. Razzano?

6 MR. RAZZANO: So, of course if Mr. Lujan is sick, he's sick. But my
7 position would be if the Court is going to go forward, whatever
8 witnesses, you know, Jerome Aguon or you know, the Borjas, fine. But
9 Al Leon Guerrero and Won Sun Min have to be cross-examined by
10 David Lujan. That's our position.

11 THE COURT: Is that also your position, Mr. Gavras?

12 MR. GAVRAS: Yes, Your Honor. That's actually what we discussed
13 outside.

14 THE COURT: All right. Why don't we do that, can you handle that, Mr.
15 Phillips? You're an experienced lawyer and you've been handling all the
16 motions and all of the case for a great percentage of the time with Mr.
17 Marasigan. Are you able to cross-examine these witnesses?

18 MR. PHILLIPS: Your Honor --

19 THE COURT: The other witnesses, not the co-conspirator, co-
20 defendants.

21 MR. PHILLIPS: Yeah, I know -- I shouldn't say I know, I may anticipate
22 the Court will not agree, but I think co-Counsel will agree, as an
23 example, when we had what I call -- the aloha guys, and I don't
24 remember anything that co-Counsel asked, obviously I didn't ask any
25 questions, and Mr. Lujan walked up and he simply asked about "Did
26 anybody step forward? Is anybody helping the kids today? Has anybody
27 stepped forward and raised the money?" The answer is no. That's Mr.
28 Lujan. And that's what my client is entitled to. That's why I'm doing
29 motions and he brought on Mr. Lujan. He would not have retained Mr.
30 Lujan, Your Honor, if there was no need for him.

31 So at that point, you know, I can admit, okay, at that point, call it
32 relegated or what, I'm relegated to certain things, but yeah, I'll do cases
33 with Mr. Lujan for as long as he allows me but --

34 THE COURT: That's not the question. The issue -- the question is -- Mr.
35 Razzano had already proposed -- made that similar proposal earlier in his
36 writings with regard to the co-conspirator, co-defendants that I guess that
37 the parties had indicated that they felt they would like him to -- parties,

1 including Mr. Gavras and Mr. Razzano's clients, that they wanted him to
2 conduct the cross-examination of them. And the other witness, they
3 would mind if -- or they would propose that you would handle the other
4 witnesses. Are you saying that you're not able to do it?

5 MR. PHILLIPS: Your Honor, I'm saying that my client's choice is Mr.
6 Lujan. And with all due respect to co-Counsel, some of the other names
7 they may not find substantive. In my experience, they're all substantive,
8 each one of them so far. Now, there may be a custodian of records that
9 shows up, but Your Honor may remember at the very beginning, we were
10 even arguing about whether or not these Rev & Tax custodians of
11 records, because they're not, they're substantive witnesses. Custodians of
12 records hands it over and it's like a chain of custody as opposed to going
13 through the whole thing, presenting the documents to the jury, in my
14 opinion, they're all substantive witnesses, Your Honor. And my client has
15 chosen Mr. Lujan. The record will show that he hired him after he hired
16 me. And so clearly --

17 THE COURT: Well, he hired him after a co-defendant died.

18 MR. PHILLIPS: Right.

19 THE COURT: No, it wasn't after he hired you, it was way after he hired
20 you, not immediately after he hired you.

21 MR. PHILLIPS: That's correct, Your Honor.

22 THE COURT: So let's get the record straight, he hired you I think four
23 months before this trial, this trial -- this case has been ongoing for a few
24 years now. So -- and there -- and I'm not even sure if there is an issue of
potential conflict. I guess the prosecutor didn't raise that when there was
an entry of appearance by David Lujan to represent your client after he
had been representing another co-defendant. You know, but anyway,
that's not before the court. But the Court hadn't thought about that. I don't
think you -- Ms. David, you had ever --

25 MS. DAVID: That is correct. The government did not raise that issue.

26 THE COURT: And you didn't think there was a conflict? Or you just
27 hadn't thought about it?

28 MS. DAVID: I don't want to say yes and no, but I didn't raise the issue,
29 Your Honor.

30 THE COURT: Right, okay. The Court does note that. In terms of ethical
31 issues, that that could be a problem too. But anyway, all right, so you're
32 not prepared then, Mr. Phillips, to conduct the cross-examination of the
33 other witnesses, that's what you're telling the Court?

1 MR. PHILLIPS: Your Honor, I'm not my client's counsel of choice, it's
2 Mr. Lujan.

3 THE COURT: All right. So you're not prepared? You're not prepared to
4 do it?

5 MR. PHILLIPS: No, I'm not prepared, I had no idea until early this
6 morning that [Mr. Lujan] was not going to make it. So, no, I'm not.
7 Although I think the significant question is whether I'm my client's
8 counsel of choice. The fact --

9 THE COURT: All right. Well, we will continue pushing on. I'm going to
10 call in the jurors, speak to the jurors, and if I continue this case today,
11 we're going to come back again tomorrow. I'll tell the jurors to come
12 back and we're going to try to proceed. Because -- and I will -- I'll even
13 push through Saturday or Sunday if we have to. I will tell you that now,
14 Counsels. I think that -- you know, I just feel like some of these delay
15 tactics, even including some of the examination of the witnesses, is
16 unnecessary. And so I want to proceed forward. I think the jurors are
17 extremely patient, we -- they've been extremely patient and very
18 generous in saying that they will come back to the court, even though
19 there is going to be a separation for Mr. Lujan to have to go to Thailand
20 for -- on the first day he indicated that he might have an operation or
21 some procedure in Thailand, and then the next day, he says, oh, no, I
22 don't have an operation, even though he's supposed to go see his doctor
23 and make sure that was taken care of, but I need to go see him. And so, I
24 mean I find that a little suspicious. I will say that to you, Counsel, right
now.

And then now we come back here, and I'm not saying that he's feigning
illness, but the Court did not notice that at all in yesterday's presentation,
that he was ill at all. You guys have made your observations, I made my
observation as the trial Judge. So that's already on the record. So let me
call in the jurors and then --

Id. at 8:23-17:10. At this point, counsel for Defendant Christine Chan, Mr. Gavras, indicated that
he would like to speak with defense regarding a possible solution to "be more expeditious" but
indicated that they were unable to do so. *Id.* at 17:11-18-9. Mr. Gavras added, "You Honor, I
would like to say in no way are these tactics." *Id.* at 18:8-18:9. The court responded:

THE COURT: Well, I'm suspicious, Counsel. I'm not saying that about
Mr. Razzano, but I was suspicious when the request first came in
regarding the Thailand trip and there was no -- you know, just a change
immediately, like "Oh, by the way, yes, I have to go in for a procedure, I

1 have to go immediately." And the next morning, "Oh, no, we don't have
2 to do it now. I don't have to see the doctor about that, I just have to go --
3 my wife has a ticket on Monday, I have no ticket to go." You know, it
just sounded suspicious to me at the time. I will say that. Okay. Nothing
else then?

4 MR. GAVRAS: No, ma'am.

5 THE COURT: All right. So the Court will say this, number one, I have
6 not ruled on the Sixth Amendment right to counsel of one's choice. The
7 Court has not made that ruling yet. I'm going -- I have just continued the
8 case because Mr. Lujan had to go to a medical appointment as he
9 indicated. So I'm going to take this time, I've already done research on
10 this and I'm going to take this time this afternoon, I'll be prepared to
11 make a ruling on that tomorrow morning. And I'm going to assume that
12 Mr. Lujan is here. If he's not here, I would say that, Mr. Phillips, you
13 should be prepared to proceed with representing your client, Mr.
14 Marasigan. If Mr. Phillips -- Mr. Lujan is not present and the Court
15 makes a ruling on -- against your position on Sixth Amendment right to
16 Counsel.

17 Also, too, with regard to -- and I didn't ask this, because I -- you know,
18 when you guys -- all of you are officers of the court when you come
19 before the court, but I will say that because of my own observation of
20 Mr. Lujan, which I indicated already, the Court will require then that Mr.
21 Lujan submit to the Court a doctor's excuse or a doctor's appointment
22 memorialization indicating that he went today, because you had
23 indicated, Mr. Phillips, that he doesn't have an appointment as of this
24 morning, he did not have one before 8 o'clock or 8 o'clock this morning.
So the Court will require that.

The Court is concerned about the jurors. The Court has -- we've asked 18
jurors to come in and proceed with this trial. We've already lost one.
There is a possibility that we're going to lose another, but those have
been taken care of, the person that had a training issue because of the
continuance requested by Mr. Razzano. So we still are safe with the
jurors, but let me call in the jurors, please. They're all ready to go.

20 *Id.* at 18:10-20:3. The court then called in the jury and stated the following:

21 THE COURT: Welcome back, ladies and gentlemen of the jury. I know
22 we were supposed to start at eight, but I received a message from Mr.
23 Phillips that his co-counsel, Mr. Lujan, is ill. And so they've asked for a
continuance today and I'm sorry that I'm going to have to grant it, at least
for today. I will have to do that.

24 And a couple things: I'll ask you to come back tomorrow. Please keep an
open mind, do not form or express any opinion on this case until it's

submitted to you. Do not speak to anyone on any subject connected with this trial. I will say if anyone tries to get in contact with you, you must tell me immediately. I am sorry. I know that, you know, we're trying to move on this. The Court is concerned about the efficient administration of justice on the parts of all these lawyers and yourselves and I know that you have done your very best, each of you, ladies and gentlemen of the jury.

So I thank each and every one of you for your time. But unfortunately, the Court will -- at the request of Counsels, the Court will have to grant the continuance for today. We will start tomorrow morning at 8:00 a.m. And so please be on time and I'll see you at 8, so I apologize for this inconvenience to all of you again. All right. I'm sorry about that.

Please rise for the jury.

Id. at 20:5-21:3. The court then proceeded to discuss Defendant Christine Chan's outstanding evidentiary objection with the parties as it arose during the testimony of Mr. Aguon the day prior. *See* Mins., ECF No. 441.

E. April 3, 2025

On April 3, 2025, all parties and counsels were present except for Mr. Lujan, who arrived late.⁴ *See* Tr. at 4:01-5:22, ECF No. 450. Upon Mr. Lujan's arrival, he orally moved to disqualify the undersigned from presiding over this case for being prejudiced against him. *See* Am. Mins., ECF No. 454; Tr. at 6:17-8:21, ECF No. 450. The basis for the motion was founded on Mr. Lujan's belief that the undersigned had "hard feelings against [him]" due to our "history that really turned sour on March 21, 2022[,] in [*United States v. Walker, et al.*] . . . [when] the Ninth Circuit reversed . . . [my] decision to sever Mr. Crowe." Tr. at 7:8-8:21, ECF No. 450. According to Mr. Lujan, this reversal is "just something that [the undersigned] can't overcome," which

⁴ The court notes that on more than one occasion, Mr. Lujan has failed to follow court orders or conduct himself respectfully. For example, the court specifically ordered Mr. Lujan to provide a doctor's note or other memorialization of his medical appointment on April 2, 2025. Instead, Mr. Lujan provided an email about insurance coverage for his prior appointment in Thailand. *See* Mins., ECF Nos. 441, 454. Mr. Lujan also showed up to court about thirty minutes late on April 3, 2025, without providing any explanation for his tardiness. *See* Am. Mins., ECF No. 454. Despite these unprofessional and disrespectful behaviors, the court had shown nothing but patience to Mr. Lujan and had not held him in contempt or issued sanctions.

1 means that the undersigned “cannot be fair to Mr. Marasigan.” *Id.* at 7:05-7:06, 8:14-8:16. The
2 court denied Mr. Lujan’s motion, instructed to him to file a written motion, and indicated that the
3 court will proceed with trial. *Id.* at 8:17-8:21.

4 In response, Mr. Lujan stated, “Well, Your Honor, at this time then, if you’re not going to
5 allow me, then I’m going to withdraw from this case.” *Id.* at 8:22-8:24. Mr. Lujan then began to
6 walk out of the courtroom. However, the court called Mr. Lujan back before he left the
7 courtroom and denied his motion to withdraw, explaining that “[y]ou’re in the middle of trial,
8 you have an obligation to your client.” *Id.* at 9:19-10:23. After a brief discussion of the court’s
9 prior observations regarding Mr. Lujan’s conditions and the most recent requests for mid-trial
10 continuances, Mr. Lujan claimed that the court’s observations were not “fair and just.” Mr. Lujan
11 then proceeded to state the following:

12 MR. LUJAN: Just because you’re the judge doesn’t mean, Your Honor,
13 that you’re, you know, you’re the god. You may be the god in here, but
not outside and not with the Ninth Circuit.

14 THE COURT: Mr. Lujan, Mr. Lujan, please be more civil in the
15 courtroom.

16 MR. LUJAN: Well --

17 THE COURT: All right. Is there anything else? The Court is denying
your request to withdraw as Counsel.

18 MR. LUJAN: Well, then I’m just not going to do anything, period.

19 THE COURT: Well that’s up to you. This is -- Mr. Marasigan has
20 retained you, that’s up to you to decide. You and Mr. Marasigan.

21 *Id.* at 11:20-12:11.

22 Immediately after Mr. Lujan’s statement that he would “not do anything, period,” the
23 court asked the parties whether they were prepared to proceed with trial as scheduled, counsels
24 for Defendants Arthur Chan and Christine Chan indicated that they were prepared. *Id.* at 12:12-

1 12:20. However, Mr. Phillips indicated that he is "not prepared" because "Mr. Lujan is [Mr.
2 Marasigan's] counsel of choice." *Id.* at 12:22-12:23. Mr. Phillips then proceeded to explain:

3 MR. PHILLIPS: Your Honor, I've never done a trial, ever, that I didn't
4 have somebody at the office working for me, and whether that person is
5 present, Mr. Lujan has done the same, and I would suggest that at least
6 the other Counsel have done the same. Whether that person is sitting here
7 or at the office, I don't believe a judge would ever call an attorney from
8 an office, an associate, to take over.

9 Your Honor, you may not see it, and I'll defer to co-Counsel, the
10 privilege of working with David Lujan is why I'm here.

11 THE COURT: You already made that point.

12 MR. PHILLIPS: I'm going to make it again, Your Honor, because we're
13 accused of delay tactics. And, Your Honor, we -- well, I asked, because I
14 wanted to see a transcription of what happened yesterday and what Your
15 Honor said to us, but more importantly, I think Your Honor what you
16 said to the jury, was really just uncalled for. It's really uncalled for, your
17 opinion with them with regard to baseless allegations, and you can ask
18 [Mr. Gavras] and [Mr. Razzano], is there any -- was there ever a
19 discussion regarding delay tactics. Never. And maybe we're on tape, God
20 knows what we said, but we never spoke about anything to get a delay. In
21 fact, we were trying to help [Mr. Razzano]. And so there is no question
22 about that, Your Honor. So if the Court [were] to allege as you did this
23 morning that you're observing delay tactics, how about the fact that the
24 witnesses can't take the stand? That happens, Your Honor. Did you see
one -- I never accused Ms. David of aha, because you know, Mr. Lujan
was doing pretty well with Mr. Leon Guerrero, of course he doesn't show
up the next day. You didn't hear that from us, Your Honor. Things like
that happen, especially when people reach a certain age, it becomes more
frequent. And so whether, you know --

THE COURT: I'm sorry, when people reach a certain age? What are you
talking about?

MR. PHILLIPS: Yesterday, Your Honor, the government was not
prepared with any witness when we were ready to start. And Your Honor
said, you know, get your witnesses together, and Ms. David, I think,
frankly explained that it's not her fault but Jerome Aguon was not here,
Mr. Leon Guerrero had called in or they contacted him and he said he
was not coming. And that's what happens, Your Honor, jurors do the
same. And so the idea that, you know, imagine if we were saying aha, we
suspect that Ms. David has delay tactics for Mr. Leon Guerrero, I think
Your Honor would say, Mr. Phillips, because it would be baseless, right.
And so for the Court to express those kinds of views Your Honor,

1 repeatedly, first of all, they're baseless, but number two, they do have an
2 effect, Your Honor. Look at what's going on here. And to think that the
jury is not perceiving that you feel a certain way, I would suggest is not
correct.

3
4 THE COURT: The Court has already cautioned the jury not to hold any
delays by anybody against the parties or Counsels. The Court has done
that. And I indicated that to the jurors.

5
6 MR. PHILLIPS: That sentence may have been said, Your Honor, but
there was much more said and there was much more conveyed to the
7 jury. And that's just -- and then with us, it's like you know, I think there is
-- and I forgot the words you used but it was something about "just get to
8 the facts and move on." There has never been a better presentation that
I've seen than what Mr. Lujan did with Mr. Leon Guerrero. And I've seen
Mr. Lujan a lot and again, I suggested --

9
10 THE COURT: Well nobody -- Mr. Phillips, nobody is questioning his
cross-examination.

11 MR. PHILLIPS: Well you were yesterday, Your Honor, you said -- yes,
you were.

12
13 THE COURT: All right. That's it, file your motion.

14 MS. DAVID: Your Honor, I would just note for the record that
yesterday, we did have our government witnesses. In fact, I asked Court
15 if we could excuse them when we learned that we weren't going to have
any session yesterday. I would note that Mr. Leon Guerrero is still sick
16 though.

17 *Id.* at 13:1-15:24.

18 Thereafter, the court recessed and instructed Mr. Lujan to file his motion for
19 disqualification on an expedited schedule. *Id.* at 16:16-17:13; *see also* Am. Mins., ECF No. 454.
20 The court further ordered Mr. Lujan and Mr. Phillips to file their motions to withdraw on the
21 same schedule if they intended to proceed as such. Tr. at 16:18-17:13, ECF No. 450. The court
22 also ordered the Government to respond, and Defendant Marasigan was to file a reply. *Id.* The
23 court further cautioned Mr. Phillips and Mr. Lujan with the following:

24 THE COURT: I will expect that both Mr. Lujan and Mr. Phillips will
have [counseled Mr. Marasigan] as to what this will mean for his
representation in the middle of trial

1
2 ...

3 and I will continue to remind Counsels of your ethical obligations as
4 lawyers to your clients, to the Court[,] and to the administration of
5 justice.

6 *Id.* at 17:8-17:25.

7 The court then called in the jury, informed them that a legal matter has been brought to
8 the court's attention that must be resolved before proceeding with trial, and instructed them "not
9 [to] hold this against either of the parties or their attorneys." *Id.* at 18:21-19:5. The court then
10 ordered that the jurors return on April 21, 2025, to proceed with trial from 8:30 a.m. to 4:00 p.m.
11 *Id.* at 19:5-20:24. Finally, before excusing the jurors, the court cautioned them not to
12 communicate with anyone about the subject of the trial. *Id.*

13 Outside the presence of the jury, the court allowed the parties to argue their positions on
14 Defendant Christine Chan's objection to certain evidence as argued the day prior. *Id.* at 21:5-
15 23:2. Not long after the arguments began, Mr. Lujan then asked that he, Mr. Phillips, and their
16 client be excused to work on the motions. *Id.* at 23:5-25-7. The court granted their request, and
17 counsels waived their and their client's presences for the remainder of the arguments, indicating
18 that Defendant Marasigan "[will] rely on the co-counsels." *Id.* at 23:20-21.

19 **F. The Written Motions**

20 As explained above, Mr. Lujan, on behalf of Defendant Marasigan, filed successive
21 motions to disqualify the undersigned from presiding over this case. *See* ECF Nos. 449, 457. The
22 first motion was filed on April 3, 2025, and the second motion was filed on April 7, 2025. *See*
23 ECF Nos. 449, 457. Mr. Lujan filed two affidavits in support of the Motion to Disqualify (ECF
24 Nos. 448, 452) and a declaration in support of the Motion to Recuse (ECF No. 457-1). The
 primary difference between the motions is the grounds upon which they are made. The Motion to
 Disqualify is made under both 28 U.S.C. § 144 and 28 U.S.C. § 455, and the Motion to Recuse is

made only under 28 U.S.C. § 455. *See* ECF Nos. 449, 457. Beyond this distinction, the bases for the recusal and disqualification motions are similar.

In the Motion to Disqualify, Defendant Marasigan first requests that a separate judge be appointed to hear and decide the motion pursuant to 28 U.S.C. § 144. *See* Mot. to Disqualify at 1-2, ECF No. 449. The arguments made in support of the undersigned's disqualification under sections 144 and 455 are as follows: (1) the undersigned harbors personal bias and prejudice against Mr. Lujan that has manifested in the trial proceedings in this case; and (2) the undersigned's alleged prejudice against Mr. Lujan originates from the Ninth Circuit's reversal of the court's decision in a separate case in which Mr. Lujan represented a defendant. *Id.* at 2-3. The first supporting affidavit, signed under penalty of perjury⁵, restates the primary argument in the motion, and attaches five transcripts, a total of 171 pages, including four transcripts from *United States v. Walker, et al.*, Criminal Case No. 18-00010 (D. Guam) and one transcript excerpt from the proceedings in this case on April 2, 2025. *See* Affidavit, ECF No. 448. No factual assertions beyond a restatement of the arguments are made in the affidavit, which Mr. Lujan appears to attribute as a product of an expedited filing deadline "as further evidence of Judge Tydingco-Gatewood's bias and prejudice against me." *Id.* at 2. The second affidavit includes only an excerpted transcript from the proceedings in this case on April 3, 2025. *See* Supp. Affidavit, ECF No. 452.

In the Motion to Recuse, Defendant Marasigan requests that the undersigned be disqualified because "my impartiality and bias against Attorney Lujan might reasonably be questioned." Mot. to Recuse at 1, ECF No. 457. Unlike the Motion to Disqualify, the Motion to Recuse is styled a memorandum of law that explains the grounds for a judge's self-recusal under

⁵ The court notes that Mr. Lujan signed the affidavit as a representative of his co-counsel's law firm, Phillips & Bordallo, P.C. *See* Affidavit at 3, ECF No. 448. The supplemental affidavit and remaining filings are properly signed under Mr. Lujan's law firm, Lujan & Wolff LLP. *E.g.*, Mot. to Recuse at 5, ECF No. 457.

1 28 U.S.C. § 455, and then makes further factual allegations in support of the requested relief. *Id.*
2 at 2-3. The arguments made by Defendant Marasigan in support of the undersigned's
3 disqualification are as follows: (1) the undersigned is prejudiced against Mr. Lujan because "it
4 has recently come to light that [the undersigned] will not be reappointed" and a "likely factor in
5 [that] decision" was because the Ninth Circuit reversed the court's decision to sever Mr. Lujan's
6 former client, Mr. Kenneth Rufus Crowe, in *United States v. Walker, et al.*; (2) the undersigned
7 holds this reversal and supposed non-reappointment against Mr. Lujan; and (3) the undersigned's
8 decision to extend the trial schedule for one week and "only [provide] 10-15 minutes each day
9 for lunch" is physically taxing to Mr. Lujan and his client but prevents him from "consult[ing]
10 with his client . . . and assess[ing] the case and conduct[ing] legal research." *Id.* at 3-6. Mr.
11 Lujan's declaration in support of the Motion to Recuse states Mr. Lujan's role in *United States v.*
12 *Walker, et al.*, explains the procedural posture and the Ninth Circuit's ruling in that case, restates
13 the factual arguments made in the memorandum of law, and concludes that the undersigned is
14 "finding it difficult to be impartial to [Mr. Lujan] and [his] client in this matter." Decl. at 1-3,
15 ECF No. 457-1.

16 The Government opposed both motions, arguing that the undersigned's disqualification
17 or recusal is not proper under the substantive standard employed in 28 U.S.C. § 455 and that
18 Defendant Marasigan has not met his burden of alleging specific facts in support of such
19 arguments. *See* ECF Nos. 455, 463.

20 In response to the Government's first opposition, Defendant Marasigan filed a reply that
21 excerpts portions of the Ninth Circuit's decision in *United States v. Crowe* and identifies specific
22 portions of the exhibits attached to his prior affidavits that are believed to demonstrate the
23 undersigned's "extreme bias and prejudice." *See* Reply, ECF No. 456.

24 II. Legal Standard

1 Under 28 U.S.C. § 144, when a party files a “timely and sufficient affidavit” that attests
2 that the presiding judge “has a personal bias or prejudice against either him or in favor of an
3 adverse party, such judge shall proceed no further therein, but another judge shall be assigned to
4 hear such proceeding.” The affidavit must “state the facts and the reasons for the belief that the
5 prejudice exists, and shall be filed not less than ten days before the beginning of the term at
6 which the proceeding is to be heard, or good cause shall be shown for failure to file within such
7 time.” *Id.* Parties are prohibited from filing more than one affidavit, and the affidavit must be
8 filed with “a certificate of counsel of record stating that it is made in good faith.” *Id.* Similarly,
9 under 28 U.S.C. § 455(a), a judge “shall disqualify [herself] in any proceeding in which [her]
10 impartiality might reasonably be questioned.” A judge must also disqualify herself when she
11 “has a personal bias or prejudice concerning a party, or personal knowledge of disputed
12 evidentiary facts concerning the proceedings.” *Id.* at § 455(b)(1).

13 Both statutes have the same substantive standard for recusal: “[W]hether a reasonable
14 person with knowledge of all the facts would conclude that the judge’s impartiality might
15 reasonably be questioned.” *United States v. Hernandez*, 109 F.3d 1450, 1453 (9th Cir. 1997)
16 (quoting *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986)). “The reasonable person is
17 not someone who is hypersensitive or unduly suspicious, but rather is a well-informed,
18 thoughtful observer.” *United States v. Mikhel*, 889 F.3d 1003, 1027 (9th Cir. 2018) (quoting
19 *United States v. Holland*, 519 F.3d 909, 913 (9th Cir. 2008)). “The standard must not be so
20 broadly construed that it becomes, in effect, presumptive, so that recusal is mandated upon the
21 merest unsubstantiated suggestion of personal bias or prejudice.” *Id.*; *see also Sibla*, 624 F.2d at
22 868 (“[M]ere conclusory allegations, such as claimant’s, are insufficient to support a claim of
23 bias or prejudice such that recusal is required.”).

1 Motions under both statutes must be made in a timely fashion. *See United States v.*
2 *Mikhel*, 889 F.3d at 1026-27. “While there is no *per se* rule that recusal motions must be made at
3 a fixed point in order to be timely, such motions should be filed with reasonable promptness after
4 the ground for such a motion is ascertained.” *Id.* (quoting *E. & J. Gallo Winery v. Gallo Cattle*
5 *Co.*, 967 F.2d 1280, 1295 (9th Cir. 1992)). Where “unexplained delay” in filing a recusal motion
6 “‘suggests that the recusal statute is being misused for strategic purposes,’ the motion will be
7 denied as untimely.” *Id.* (citations omitted).

8 The statutes differ, however, in their procedures. *See United States v. Sibla*, 624 F.2d
9 864, 867 (9th Cir. 1980) (explaining how the two sections are complementary). On the one hand,
10 Section 455 has no procedural requirements. The judge just has the duty to evaluate whether she
11 should be recused. *Id.* at 867-68. Section 455 also does not require that the question of recusal be
12 referred to another judge. *Id.* On the other hand, section 144 “explicitly conditions relief upon the
13 filing of a timely and legally sufficient affidavit.” *Id.* (citation omitted). “If the judge to whom a
14 timely motion is directed determines that the accompanying affidavit specifically alleges facts
15 stating grounds for relief under section 144, the legal sufficiency of the affidavit has been
16 established, and the motion must be referred to another judge for a determination of its merits.”
17 *Id.* (citing *United States v. Azhocar*, 581 F.2d 735, 738-40 (9th Cir. 1978) (Moreover, since the
18 inquiry is addressed to the facial sufficiency of the affidavit—not the truth or falsity of the facts
19 stated therein, . . . [a] ‘hearing’ is unnecessary.”)).

20 An affidavit is not legally sufficient unless it “state[s] facts which if true fairly support
21 the allegation that bias or prejudice stemming from (1) an extrajudicial source (2) may prevent a
22 fair decision on the merits,” and (3) the facts must substantially support the allegation of bias.
23 *Azhocar*, 581 F.2d at 739-40; *see also Sibla*, 624 F.2d at 868. Disagreement with a court ruling is
24 not a legally cognizable ground for recusal. *See Studley*, 783 F.2d 934, 939 (9th Cir. 1986). As

1 such, allegations of bias, partiality, and prejudice must stem from an extrajudicial source to
2 warrant disqualification. *See Likety v. United States*, 510 U.S. 540, 554 (1994). In fact, “judicial
3 rulings alone almost never constitute a valid basis for a bias or partiality motion.” *Id.* (explaining
4 that “opinions formed by a judge on the basis of facts introduced or events occurring in judicial
5 proceedings do not provide a basis for recusal unless they indicate that the judge has ‘a deep-
6 seated favoritism or antagonism that would make fair judgment impossible’”). Although the
7 evaluation of whether the affidavit is legally sufficient under section 144 determines whether
8 referral to another judge is necessary, the same requirement that bias or prejudice must be
9 “directed at a party and stem[] from an extrajudicial source” is the same under section 455. *Sibla*,
10 624 F.2d at 689.

11 **III. Discussion**

12 **A. Motion Under 28 U.S.C. § 144**

13 Defendant Marasigan’s Motion to Disqualify relies on 28 U.S.C. § 144 as a source of law
14 to disqualify the undersigned from presiding over this case. *See* Mot. to Disqualify, ECF No.
15 449. Upon review of the Motion to Disqualify and the supporting affidavits, the relief requested
16 under section 144 must be denied because the affidavits in support of such motion are untimely
17 and legally insufficient.

18 The Motion to Disqualify was filed on April 3, 2025, following the court’s denial of Mr.
19 Lujan’s oral motion to disqualify the undersigned from this case. *See* ECF Nos. 448, 449, 452,
20 453. The statute explicitly conditions the review of such motions upon *timely* filing, which is
21 either within ten days “before the beginning of the term at which the proceeding is to be heard”
22 or after good cause is shown for failure to meet this deadline. *See* 28 U.S.C. § 144.

23 The indictment in this case was filed on May 10, 2023, and Mr. Lujan’s representation of
24 Defendant Marasigan began on October 29, 2024. *See* ECF Nos. 1, 235. However, even though

1 Mr. Lujan's representation of Defendant Marasigan did not begin until October 29, 2024,
2 approximately five months before trial, he previously represented former codefendant Richard
3 Brown since at least June 15, 2023, until his passing. *See* ECF Nos. 36, 160, 161. As such, Mr.
4 Lujan has been on this case for a total of approximately one year and ten months, whether as
5 counsel to Mr. Brown or to Mr. Marasigan. And despite the length of Mr. Lujan's involvement in
6 this case, no motion to disqualify the undersigned was filed until seven days into trial.

7 Moreover, the Motion to Disqualify does not show good cause for the failure to timely
8 file. The explanation provided in the Motion to Disqualify and supporting affidavit explain that
9 that the undersigned's "personal bias and prejudice against [Mr. Lujan] manifested in these
10 proceedings but originat[ed] for the most part from in-and-out of court encounters in a separate
11 case." Mot. to Disqualify at 2, ECF No. 449. Interpreting this contention and other related
12 contentions in Defendant Marasigan's favor, the court assumes that the Motion to Disqualify and
13 Mr. Lujan's supporting affidavit are attempting to explain that the alleged bias and prejudice did
14 not become apparent until the recent trial proceedings. *See id.* at 2-3; Affidavit at 1, ECF No.
15 448. Even so, good cause has not been shown, particularly considering the extent of Mr. Lujan's
16 involvement in this case leading up to these proceedings and how the significant majority of
17 arguments made in favor of the undersigned's disqualification rely on decisions rendered by the
18 undersigned and the Ninth Circuit in *United States v. Crowe*. In his first affidavit, Mr. Lujan
19 points to the "limited timeframe" that was provided to file such motion to excuse the untimely
20 filing. *See* Affidavit at 2, ECF No. 448. This contention ignores the fact that the oral motion was
21 made mid-trial, after eleven government witnesses⁶ took the stand and after more than a year and
22 a half worth of proceedings, and it is supported only by the conclusion that "Judge Tydingco-
23 Gatewood's baseless comments, and her rulings (or failure to rule) alerted Attorney Lujan to the
24

⁶ The court notes that this is over half of the Government's witnesses.

1 Judge's apparent and extreme dislike for Attorney Lujan." Mot. to Disqualify at 2, ECF No. 449.
2 Without more, the court cannot find that there has been good cause shown to excuse Defendant
3 Marasigan's failure to timely file. Accordingly, the Motion to Disqualify is untimely under 28
4 U.S.C. § 144.

5 Defendant Marasigan's Motion to Disqualify and supporting affidavits are also legally
6 insufficient to warrant further review under 28 U.S.C. § 144. As explained above, the affidavit
7 must state facts that substantially and fairly support allegations of bias or prejudice that stem
8 from an extrajudicial source and may prevent a fair decision on the merits. *Azhocar*, 581 F.2d at
9 739-40; *see also Sibla*, 624 F.2d at 868. The filings under section 144 do not meet these
10 requirements. First and foremost, the source of bias and prejudice articulated in the Motion to
11 Disqualify and supporting affidavits stem from judicial sources—namely, the Ninth Circuit
12 reversal of the undersigned's decision to sever Mr. Lujan's client in *United States v. Walker, et*
13 *al.*, and the "transcripts of the last couple days" in this case. *See* Mot. to Disqualify at 2, ECF No.
14 449; *see also Likety*, 510 U.S. at 554. The Motion also fails to articulate any arguments and the
15 affidavits fail to attest to any indication that the undersigned has exhibited a "deep-seated
16 favoritism or antagonism that would make fair judgment impossible." *Likety*, 510 U.S. at 554.

17 Furthermore, the Motion to Disqualify makes conclusory arguments supported only by
18 unidentified facts across 171 pages worth of transcripts for the court to inspect. *See* Mot. to
19 Disqualify, ECF No. 449; Affidavit, ECF No. 448. The alleged facts in the Motion to Disqualify
20 are not stated with particularity that supports the contentions that the undersigned is substantially
21 biased against Mr. Lujan or his client. *See Azhocar*, 581 F.2d at 739-40. It is not until Defendant
22 Marasigan's reply to the Government's opposition that he identifies excerpts from the Ninth
23 Circuit's decision in *United States v. Crowe*, and the proceedings in this case to support his
24 conclusions. *See* Reply, ECF No. 456. Again, however, these contentions fail to allege sources of

1 bias and prejudice that stem from extrajudicial sources and, therefore, should be denied under 28
2 U.S.C. § 144. *See Studley*, 783 F.2d at 939 (“[A] judge’s prior adverse ruling is not sufficient
3 cause for recusal.”).

4 Therefore, the court denies Defendant Marasigan’s Motion to Disqualify under 28 U.S.C.
5 § 144 for failure to file a timely motion and legally sufficient affidavit. As such, the court need
6 not refer the motion to a separate judge for resolution. *See* 28 U.S.C. § 144. The Motion to
7 Disqualify will now be analyzed under 28 U.S.C. § 455 below.

8 **B. Motions Under 28 U.S.C. § 455**

9 Defendant Marasigan also grounded his Motion to Disqualify and Motion to Recuse
10 pursuant to 28 U.S.C. § 455. *See* ECF Nos. 449, 457. A judge must recuse herself under section
11 455(b)(1) where “[s]he has a personal bias or prejudice concerning a party, or personal
12 knowledge of disputed evidentiary facts concerning the proceeding.” 28 U.S.C. § 455(b)(1). As
13 explained above, the legal standard for evaluating motions under section 455 require the
14 presiding judge to evaluate: “whether a reasonable person with knowledge of all the facts would
15 conclude that the judge’s impartiality might reasonably be questioned.” *Hernandez*, 109 F.3d at
16 1453 (citation omitted). This standard should not be interpreted such that it mandates recusal
17 upon “the merest unsubstantiated suggestion of personal bias or prejudice.” *Mikhel*, 889 F.3d at
18 1027. As with affidavits reviewed under 28 U.S.C. § 144, allegations of bias or prejudice must
19 be based on extrajudicial sources. *Sibla*, 624 F.2d at 868. Here, the Motion to Disqualify and
20 Motion to Recuse fail to meet this standard.

21 In the first motion, the Motion to Disqualify, Mr. Lujan states that “Attorney Lujan’s
22 Affidavit lists the facts and reasons Attorney Lujan believes Judge Tydingco-Gatewood harbors
23 bias and prejudice against Attorney Lujan.” *See* Mot. to Disqualify at 2, ECF No. 449. Rather
24 than articulating such facts, Mr. Lujan lists and attaches five transcripts, four from the court’s

1 proceedings in *United States v. Walker, et al*, and one from this case. *See* Affidavit, ECF No.
2 448. Mr. Lujan also attests to only one alleged fact beyond the attached transcripts: “Judge
3 Tydingco-Gatewood harbors personal bias and prejudice against me manifested in these
4 proceedings but originating for the most part from there [*sic*] in-and-out of court encounters in a
5 separate case in which the Ninth Circuit overturned Judge Tydingco-Gatewood.” *Id.* at 1. Mr.
6 Lujan’s attestation is simply an unsubstantiated conclusion that fails to provide any adequate
7 grounds for relief under 28 U.S.C. § 455.

8 Moreover, “judicial remarks during the course of a trial that are critical or disapproving
9 of, or even hostile to, counsel, the parties, or their cases . . . *may* [support a bias or partiality
10 challenge] if they reveal an opinion that derives from an extrajudicial source; and they *will* do so
11 if they reveal such a high degree of favoritism or antagonism as to make fair judgment
12 impossible.” *Likety*, 510 U.S. at 555-56. Defendant Marasigan has not met this standard. He has
13 not provided any alleged fact from an extrajudicial source nor has he provided any alleged fact
14 that rises to the level of a high degree of favoritism or antagonism to make fair judgment
15 impossible in this trial. Accordingly, the Motion to Disqualify is denied.

16 In the second motion, the Motion to Recuse, Defendant Marasigan attempts to take a
17 second bite at the apple by attempting to identify an extrajudicial source to support his original
18 motion under 28 U.S.C. § 455.⁷ *See* Mot. to Recuse, ECF No. 457. Therein, Defendant
19 Marasigan writes, and Mr. Lujan similarly attests to in his supporting declaration, that “it has
20 recently come to light that Judge Tydingco-Gatewood will not be reappointed to the position of
21 District Judge, and a likely factor in the decision not to reappoint her is her mishandling of

22
23 ⁷ The court notes that Defendant Marasigan has not provided a justification for his second and successive motion
24 under 28 U.S.C. § 455. While there is no explicit restriction on the filing of more than one motion under 28 U.S.C.
§ 455, as is in 28 U.S.C. § 144, the motions must be made in a timely fashion and with “reasonable promptness after
the ground for such motion is ascertained.” *See Mikhel*, 889 F.3d at 1026-27 (citation omitted). As stated above,
unexplained delay in the filing of a recusal motion “suggests that the recusal statute is being misused for strategic
purposes,” and the motion should be denied as untimely.

1 [United States v. Crowe], specifically her decision to sever Attorney Lujan’s then-client Kenneth
2 Rufus Crowe.” *Id.* at 3. The motion further states that “[t]he animosity that Judge Tydingco-
3 Gatewood feels toward Attorney Lujan has poured over to the Judge’s treatment of Attorney
4 Lujan and his client in the instant litigation . . . [as] apparent retribution for Attorney Lujan’s
5 perceived fault in causing delays in [United States v. Walker, et al.].” *Id.* at 3-4. Defendant
6 Marasigan then points to the court’s setting of a “physically taxing” and “almost-impossible”
7 trial schedule “so soon after learning that she would not be reappointed as District Judge, quite
8 likely because of her handling of the Crowe severance, strongly suggests that the Judge is lashing
9 out at Attorney Lujan for his perceived role in causing her to lose her position as District Judge.”
10 *Id.* Mr. Lujan’s supporting declaration restates those same speculations and conclusions, along
11 with at least one false statement of alleged fact, i.e., that “The Judge has ordered that trial will be
12 held seven days per week, with only 10-15 minutes each day for lunch.” *Id.* at 457-1.

13 The Motion to Recuse is premised entirely on the assumption that the undersigned bears
14 significant bias and prejudice against Mr. Lujan, at the expense of his client, for a decision
15 rendered in a separate prior criminal case dating back to over three years ago. Defendant
16 Marasigan’s attempt to tie this idea to the factually unsupported conclusion that this somehow
17 has any influence on the undersigned’s judicial renomination fails to make his argument any
18 more “extrajudicial” for purposes of evaluating whether recusal is proper under 28 U.S.C. § 455
19 than was asserted in the Motion to Disqualify. Again, “judicial rulings alone almost never
20 constitute a valid basis for a bias or partiality motion.” *Likety v. United States*, 510 U.S. at 554.
21 And Defendant Marasigan has not alleged facts sufficient to support the conclusion that the
22 undersigned has “a deep-seated favoritism or antagonism that would make fair judgment
23 impossible” in this case. *Id.*

1 First, Defendant Marasigan’s mischaracterization of the court’s proposal to proceed with
2 trial through the weekend or after hours is not the same as setting an “almost-impossible” trial
3 schedule, nor do such statements demonstrate a particular prejudice toward him or his attorney.
4 The court has routinely held court after hours, on weekends and even on holidays, when it finds
5 it necessary. For example, in *United States v. Sardoma*, the court held trial past 5:00 p.m.,
6 including on Saturdays and on July 4th. *See United States v. Sardoma*, Criminal Case No. 12-
7 00010 (D. Guam; *see also Official Committee of Unsecured Creditors v. Archbishop of Agana*,
8 Adversary Proceeding No. 19-00001 (D. Guam) (holding trial on a Saturday).

9 As noted by the court, it was concerned with the jury’s prolonged separation as a result of
10 a one-week continuance and another possible two-week continuance,⁸ particularly when the
11 Government was close to finishing its case-in-chief, that holding trial past 5:00 p.m. from April
12 1-4, 2025, was a reasonable resolution especially when the jurors were agreeable to the extended
13 hours and none of the parties opposed. Mindful of the long hours, the court’s proposed schedule
14 included 15-minute breaks at least every 1.5 to 2 hours, a lunch break of 45 minutes, and an
15 evening break of 30 minutes.⁹

16 As alleged in the motion and declaration of Mr. Lujan, there are no facts that support the
17 contention that this limited extension to the trial schedule was made to inhibit Mr. Lujan’s
18 representation of his client.

19 Second, Defendant Marasigan’s identification of the court’s statements to the parties
20 outside the presence of the jury and those made to the jury ignore the facts as they transpired in
21 this case. First, on numerous occasions, the court reminded the jury not to hold its grant of the
22 requests for continuances against the parties. *E.g.*, Mins., ECF No. 415. Second, the court’s

24 ⁸ At the time, the court had not ruled on Mr. Razzano’s motion for a two-week continuance.

⁹ The court notes that this schedule was only adhered to on April 1, 2025, due to the court’s continuance for Mr. Lujan’s illness and the motions that followed.

1 statement to the parties outside the presence of the jury indicate *skepticism* of delay tactics given
2 the last-minute nature of the request, the changing facts of a previous request,¹⁰ and the fact that
3 the request was now the third mid-trial request for a continuance. Prior to trial, there were also
4 attempts to continue, on the eve of trial, such as when the defendants failed to request for
5 discovery materials from the Department of Revenue and Taxation. Regardless, Defendant
6 Marasigan fails to allege how these statements about his attorney have prejudiced him in this
7 case.

8 Finally, Defendant Marasigan’s counsels failed to show any prejudice by the court’s
9 statements to the jury about “trying to move” forward and its concern about “the efficient
10 administration of justice” in the context of granting Defendant Marasigan’s one-day continuance.

11 Moreover, the cases cited by Defendant Marasigan in the Motion to Recuse do not lend
12 themselves to more than general principles of law under section 455. For example, in *In re*
13 *Creech*, the Ninth Circuit held that the judge abused her discretion in failing to recuse herself
14 where “her longstanding relationship with Prosecuting Attorney Jan Bennetts might call into
15 question any judgments she would have made regarding Bennett’s own professional and legal
16 obligations.” 119 F.4th 1114, 1122-26 (9th Cir. 2024). And in *United States v. Carignan*, the
17 Ninth Circuit held that the appellant failed to “set forth any facts which would lead us to believe
18
19

20 ¹⁰ On March 20, 2025, when Defendant Marasigan made his oral request to continue the trial, the request was to an
21 unknown date, seemingly full of uncertainties. Defendant Marasigan, through counsel, represented to the court that
22 Mr. Lujan was in unbearable pain, that he must immediately see his doctors in Thailand, that depending on his
doctors’ consult, he may need a re-operation of his knee, which he had been “putting off”. Because Mr. Lujan had
yet to be examined by his doctors, Defendant Marasigan’s counsels could not say when he would be available for
the continued trial.

23 That evening, however, Defendant Marasigan’s position had changed, and he was simply requesting for a one-week
24 continuance so he could be seen by his doctors in Thailand. The sudden change of request was only explained by
Mr. Phillips’s statement in his later declaration that Mr. Lujan informed Mr. Phillips that he “will not need nor be
operated on while visiting his doctor in Thailand.” See Decl. at 3, ECF No. 412. No other explanation was provided
for the sudden change of request.

1 that” “bias for or against an attorney might be so virulent as to amount of bias for or against the
2 party.” 600 F.2d 762, 764 (9th Cir. 1979).

3 Accordingly, the court denies both the Motion to Disqualify and the Motion to Recuse
4 under 28 U.S.C. § 455.

5 **IV. Conclusion**

6 The motions fail to identify any ground upon which disqualification or recusal would be
7 warranted. As discussed *supra*, the affidavits and declarations are legally insufficient and the
8 motion under section 144 is untimely. The undersigned finds that there is an absence of
9 legitimate reason to recuse or disqualify herself from this case. Additionally, the undersigned
10 finds that there is no legitimate basis to refer the motion to disqualify to a separate judge as
11 discussed above. Therefore, Defendant Marasigan’s Motion to Disqualify (ECF No. 449) and
12 Motion to Recuse (ECF No. 457) are **DENIED**.

13 **SO ORDERED.**



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Apr 19, 2025